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6 Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

## 11 | UNITED STATES OF AMERICA,

CASE NO. 1:20-CR-00004-DAD-BAM

12 Plaintiff,

**STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
AND ORDER**

14 | MARIO ALBERTO RANGEL,

DATE: April 13, 2020

15 || Defendant.

TIME: 1:00 p.m.  
COURT: Hon. B

COURT: Hon. Barbara A. McRae

17        This case is set for status conference on April 13, 2020. On March 17, 2020, the district Court  
18 issued General Order 611, which suspends all jury trials in the Eastern District of California scheduled  
19 to commence before May 1, 2020. This General Order was entered to address public health concerns  
20 related to COVID-19.

21       Although the General Order addresses the district-wide health concern, the Supreme Court has  
22       emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
23       openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
24       *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
25       exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*  
26       at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
27       judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either  
28       orally or in writing”).

1       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
2 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances  
3 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of  
4 justice served by taking such action outweigh the best interest of the public and the defendant in a  
5 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets  
6 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice  
7 served by the granting of such continuance outweigh the best interests of the public and the defendant in  
8 a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

18        In light of the societal context created by the foregoing, this Court should consider the following  
19 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
20 justice exception, § 3161(h)(7). If continued, this Court should designate a new date for the status  
21 conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
22 continuance must be “specifically limited in time”).

## **STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

- 26       1. By previous order, this matter was set for status on April 13, 2020.  
27       2. By this stipulation, defendant now moves to continue the status conference until June 8,  
28 2020 at 1:00 p.m., and to exclude time between April 13, 2020, and June 8, 2020 at 1:00 p.m.

- 1       3.     The parties agree and stipulate, and request that the Court find the following:
- 2           a)     The government has represented that the discovery associated with this case has  
3     been either produced directly to counsel and/or made available for inspection and copying.
- 4           b)     Counsel for defendant desires additional time to consult with his client, review the  
5     discovery, further investigate the case, review the government's plea offer and continue plea  
6     negotiations with the government.
- 7           c)     Counsel for defendant believes that failure to grant the above-requested  
8     continuance would deny him/her the reasonable time necessary for effective preparation, taking  
9     into account the exercise of due diligence.
- 10          d)     The government does not object to the continuance.
- 11          e)     In addition to the public health concerns cited by General Order 611 and  
12     presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
13     this case because counsel have been encouraged to telework and minimize personal contact to  
14     the greatest extent possible. It will be difficult to avoid personal contact should the hearing  
15     proceed.
- 16          f)     Based on the above-stated findings, the ends of justice served by continuing the  
17     case as requested outweigh the interest of the public and the defendant in a trial within the  
18     original date prescribed by the Speedy Trial Act.
- 19          g)     For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
20     et seq., within which trial must commence, the time period of April 13, 2020 to June 8, 2020 at  
21     1:00 p.m., inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because  
22     it results from a continuance granted by the Court at defendant's request on the basis of the  
23     Court's finding that the ends of justice served by taking such action outweigh the best interest of  
24     the public and the defendant in a speedy trial.
- 25        4.     Nothing in this stipulation and order shall preclude a finding that other provisions of the  
26     Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
27     must commence.
- 28        IT IS SO STIPULATED.

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3 Dated: March 18, 2020

McGREGOR W. SCOTT  
United States Attorney

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8 /s/ JUSTIN J. GILIO  
9 JUSTIN J. GILIO  
10 Assistant United States Attorney

11  
12 Dated: March 18, 2020

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14 /s/ DOUGLAS FOSTER  
15 DOUGLAS FOSTER  
16 Counsel for Defendant  
17 MARIO ALBERTO RANGEL

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28 **ORDER**

IT IS SO ORDERED that the 2<sup>nd</sup> Status Conference is continued from April 13, 2020 to **June 8, 2020 at 1:00 PM before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: March 19, 2020

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE